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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

JEANNE SALAMON et al., Plaintiffs and Appellants, v. CITY OF LOS ANGELES, Defendant and Respondent.	B294034 (Los Angeles County Super. Ct. No. BC643643)

APPEAL from an order of dismissal of the Superior Court of Los Angeles County, Mary H. Strobel and Michael L. Stern, Judges. Affirmed.

Melvin Teitelbaum for Plaintiffs and Appellants.

Michael N. Feuer, City Attorney, Kathleen A. Kenealy and Scott Marcus, Chief Assistant City Attorneys, Craig Takenaka, Assistant City Attorney, and Paul L. Winnemore, Deputy City Attorney, for Defendant and Respondent.

INTRODUCTION

Jeanne Salamon and 136 North New Hampshire Avenue, LLC (collectively, Salamon) have tried for years to convince the City of Los Angeles to exempt five units in an apartment building she owns from the City's rent control ordinance. She has not succeeded because the building was used for residential purposes and issued a building permit before October 1, 1978.

In 2016 the City resolved prior litigation with Salamon by entering into a stipulated judgment in which the City acknowledged that a certificate of occupancy issued for a new unit in the building in 2007 was "current" as to all the units in the building. Because the rent control ordinance generally does not apply to buildings issued certificates of occupancy after October 1, 1978, Salamon filed this action seeking to use the 2007 certificate of occupancy to free all five units from rent control. Her complaint included a petition for writ of mandate and a cause of action for inverse condemnation.

The trial court denied Salamon's petition for writ of mandate seeking to compel the City to exempt Salamon's building from the rent control ordinance because the ordinance applies to buildings, like Salamon's, for which a building permit was issued prior to October 1, 1978, even if the first certificate of occupancy was not issued until after that date. The trial court also granted a motion for judgment on the pleadings on Salamon's cause of action for inverse condemnation, ruling it was untimely, and denied Salamon's motion for leave to amend the complaint. We affirm the trial court's signed order dismissing the action.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Salamon Buys Property That Includes Unpermitted Units*

Two buildings sit on a piece of property in Los Angeles, California. In 1925 the City issued a building permit and a certificate of occupancy for Building 1, which consists of eight residential units. It is not clear when Building 2, originally a single-family residence, was constructed. In 1923 the City issued a building permit to convert Building 2 into a duplex by adding approximately 1,000 square feet to the second floor. As was not uncommon at that time, however, the City did not issue a certificate of occupancy for Building 2. Also in 1923 the City issued a permit for the construction of a garage and a storage shed for Building 2.

On October 15, 2001 a previous owner applied for a building permit to convert Building 2 into multiple apartment units. The City never issued a permit for this renovation, but at some point the previous owner proceeded with the project, which created five residential units where there had been two. In January 2007 a previous owner applied for a building permit to convert the storage shed in Building 2 into a residential unit. In May 2007 the City issued a certificate of occupancy for the new unit. The certificate stated the additional unit raised the total number of units in Building 2 to six.

In October 2007 Salamon acquired the property, and in 2015 transferred title to 136 North New Hampshire Ave, LLC.

Salamon is the sole manager of 136 North New Hampshire Ave, LLC.[1]

B. *Salamon Attempts To Get an Exemption from the Rent Stabilization Ordinance for Building 2*

The City's Rent Stabilization Ordinance precludes landlords from demanding, accepting, or retaining more than the maximum adjusted rent. (L.A. Mun. Code, § 151.04, subd. (A).)[2] The Ordinance applies to all "Rental Units" except those falling within 12 enumerated exceptions. When Salamon purchased the property in October 2007, the sixth exception stated it applied to "[h]ousing accommodations located in a structure for which a certificate of occupancy was first issued after October 1, 1978. . . ." (Former § 151.02, subd. (6), amended by Ord. No. 165,332, eff. Dec. 13, 1989.) In 1986, however, long before Salamon acquired the property, the City passed an ordinance amending various provisions of the Ordinance and stating in an uncodified section, titled "Statement of Intent," that the sixth exception was "never intended to and does not apply to buildings constructed prior to the time the Department of Building and Safety began the practice of issuing certificates of occupancy." (L.A. Ord. No. 160,791, § 14, eff. Feb. 10, 1986.)

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[1] In March 2010 Salamon transferred title to Advanced Pension Programs, Inc., which transferred title back to Salamon in May 2012.

[2] Undesignated section references are to the Los Angeles Municipal Code.

The City's Housing and Community Investment Department, formerly known as the Los Angeles Housing Department (the Department), administers the Ordinance. (L.A. Admin. Code, § 22.601, subd. (k).) In March 2008 the Department received a complaint from a tenant in Building 2 about a planned rent increase. Salamon contended the Ordinance did not apply to Building 2 because the City had issued a certificate of occupancy in May 2007. In June 2008 the Department sent Salamon a letter stating that the planned rent increase violated the Ordinance and that, because the May 2007 certificate of occupancy was for the former storage shed only, the remaining five units in Building 2 were subject to the Ordinance. The Department stated that it had no documentation the other five units of Building 2 were legally occupied and that it would conduct an inspection "to determine if the other five units are legal."

In early 2009 Salamon filed an unlawful detainer action against a tenant to enforce a rent increase and appears to have prevailed. In the course of that litigation a deputy city attorney filed a declaration in support of a motion to quash a subpoena stating that the City had declined to file misdemeanor charges against Salamon in connection with the March 2008 tenant complaint. In December 2009, however, the Department determined that, under the 1986 ordinance, the five contested units in Building 2 were not exempt because the Ordinance applied to units, like those in Building 2, that had "an original Certificate of Occupancy issued after October 1, 1978," but that were "constructed before the issuance of certificates of occupancy."

In February 2011 Salamon, citing her victory in the 2009 unlawful detainer action, applied for an exemption from the Ordinance for Building 2. The record does not include the City's response to Salamon's application, but the City must have denied it, because in August 2011 Salamon filed a petition for writ of mandate (which is in the record) under Code of Civil Procedure section 1085 to compel the City to "'recognize the Superior Court's decision wherein it determined that the six-unit building on the Property . . . is not subject to the [Ordinance].'" The City then issued a notice and order of abatement informing Salamon that the conversion of Building 2 from a duplex to a six-unit apartment building was unapproved and that she either had to demolish the unapproved portions and restore the structure back to its originally approved condition or obtain the required permits and approvals. In January 2012 the City sent Salamon a notice of failure to comply, and on March 14, 2012 a hearing decision from the Department's general manager affirmed the Department's position that only one of the six units of Building 2 was exempt from the Ordinance.

In June 2012 the superior court denied Salamon's petition for writ of mandate and ruled the judgment in Salamon's unlawful detainer action did not, as Salamon claimed, determine whether the City ever issued a valid certificate of occupancy for five of the six units in Building 2. The court stated: "Absent a legally obtained [certificate of occupancy, Salamon's] current use of these five units in Building Two is unpermitted and, as such, cannot be registered as exempt from [the Ordinance]." The court ruled Salamon failed to show the Department exceeded its jurisdiction or abused its discretion in declining to exempt the remaining five units in Building 2. Salamon did not appeal.

Nearly four years later, in April 2016, Salamon filed another action against the City for declaratory relief, this time seeking a declaration that Building 2 contained six "legal units." The parties resolved that action in September 2016 with a stipulation and order of dismissal. The stipulation contained this sentence: "It is the position of [the Department of] Building and Safety that the Certificate of Occupancy on or about May 31, 2007, relating to 6 dwelling units at . . . Building #2, is current as of the date of the signing of this instrument." The court signed the stipulated order of dismissal on September 9, 2016.

C. *Armed with the Stipulation, Salamon Files This Action*

Three months later, on December 12, 2016, Salamon filed this action for a writ of mandate and inverse condemnation. Salamon alleged that the Department of Building and Safety "informed" the Housing and Community Investment Department that the Department of Building and Safety had issued a certificate of occupancy for all six units of Building 2, but that the Housing and Community Investment Department ignored the certificate of occupancy and insisted the Ordinance applied to five of the six units. Salamon also alleged the administrative proceedings (presumably those in 2009 through 2012, for there is no evidence in the record on appeal of any other administrative proceedings) concluded that five of the six units in Building 2 were "illegal" and had to be "demolished." Salamon's cause of action for inverse condemnation claimed the Department's decision to apply the Ordinance to the five units in Building 2

caused her to suffer two adverse judgments in actions by tenants to recover illegally collected rent.[3]

Salamon asked the court to order the Department to (1) revoke any order requiring demolition of the units, (2) recognize the May 2007 certificate of occupancy "for each of the other [five] units" of the property, (3) "issue a determination that the collection of rents . . . from the tenants of said units is legal and permissible," and (4) "issue a determination that the collection of rents . . . from the tenants of said units has been legal and permissible from the date the [Department of Building and Safety] issued said [certificate of occupancy] for each of the [five] units." In her inverse condemnation cause of action Salamon alleged the Department's prohibition on her collecting rents for those units "result[ed] in destroying and condemning [the] property . . . to a value far below its fair market value as a rental income property."

On March 7, 2018 Salamon filed a brief in support of her petition for writ of mandate that did not make any reference to relief from the demolition order. She also clarified she was seeking a declaration that her collection of rents from tenants in the contested units had been legal "from May 31, 2007." The City

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[3] One of the two tenant actions Salamon identified was filed on September 26, 2011 and resolved on May 17, 2012 by an order approving a settlement that required Salamon to pay the tenant $7,500 plus attorneys' fees. The other was filed on May 7, 2009, consolidated with another action, and ultimately resolved on July 30, 2015 by a stipulated judgment that awarded the tenant $30,000 in damages and $265,000 in attorneys' fees, declared the Ordinance applied to the tenant's apartment, and established the maximum adjusted rent for that apartment.

argued that Salamon's petition was barred by the statute of limitations and issue or claim preclusion and that Salamon failed to demonstrate she was entitled to relief.

On April 19, 2018 the court, Judge Mary Strobel, in the writs and receivers department, denied the petition for writ of mandate. The court rejected the City's arguments that the statute of limitations or issue or claim preclusion barred the petition, but concluded that the five contested units in Building 2 were not exempt from the Ordinance because the building was issued a building permit and used for residential purposes before October 1, 1978. The court also concluded Salamon did not show that the City refused to recognize the May 2007 certificate of occupancy or that the City failed to issue a determination that rents collected from tenants in Building 2 had been legal and permissible since May 2007. In particular, the court found there was no evidence that the City "views the collection of rents from Building 2 as illegal" or that Salamon had demonstrated she "sought such action from [the Department] and that it refuses to perform." Thus, the court ruled, Salamon failed to show that the City had "a clear, present, and ministerial duty to act" or that the City denied Salamon "a clear and present right" under Code of Civil Procedure section 1085.

After the case returned to the individual calendar department where it was assigned for all purposes, the City filed a motion for judgment on the pleadings on Salamon's cause of action for inverse condemnation. The City argued that the statute of limitations barred this cause of action and that Salamon failed to exhaust her administrative remedies and to state facts sufficient to constitute a cause of action. The next day Salamon filed a motion for leave to amend the complaint to add a

cause of action for declaratory relief, "an additional cause of action for a writ of mandate" under Civil Code section 1954.52, and "private attorney general allegations for attorneys fees" under Code of Civil Procedure section 1021.5. The basis for Salamon's motion for leave to amend the complaint appears to have been Salamon's characterization of the City's position in connection with the petition for writ of mandate Judge Strobel ruled on in this action. According to Salamon, "it was only after the hearing on the Writ of Mandate cause of action . . . that it became clear that the City now acknowledges that all 6 units in [Building 2] are legal." Thus, Salamon argued, "there exists now an additional dispute between Salamon and [the] City as to whether said 6 units should be subject to the [Ordinance] or should be precluded from the [Ordinance] pursuant to the Costa Hawkins Rental Housing Act." (See Civ. Code, § 1954.52.)

The trial court, Judge Michael Stern, denied Salamon's motion for leave to amend the complaint, concluding that Judge Strobel's order decided the issues raised by the newly proposed petition for writ of mandate and cause of action for declaratory relief. The court also ruled the private attorney general statute was inapplicable. The court then considered and granted the City's motion for judgment on the pleadings and dismissed the action with prejudice. Salamon timely appealed from the court's signed order of dismissal.[4]

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[4] "The order of dismissal, signed by the trial court and entered by the court clerk, constitutes a judgment under Code of Civil Procedure section 581d." (*Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 741, fn. 3.)

DISCUSSION

A. *The Trial Court Properly Denied the Petition for Writ of Mandate*

1. *Applicable Law*

"Code of Civil Procedure section 1085, providing for writs of mandate, is available to compel public agencies to perform acts required by law. [Citation.] To obtain relief, a petitioner must demonstrate (1) no 'plain, speedy, and adequate' alternative remedy exists [citation]; (2) "'a clear, present, . . . ministerial duty on the part of the respondent'"; and (3) a correlative "'clear, present, and beneficial right in the petitioner to the performance of that duty.'"" (*People v. Picklesimer* (2010) 48 Cal.4th 330, 339-340; accord, *International Brotherhood of Teamsters, Local 848 v. City of Monterey Park* (2019) 30 Cal.App.5th 1105, 1111.) "A ministerial duty is an obligation to perform a specific act in a manner prescribed by law whenever a given state of facts exists, without regard to any personal judgment as to the propriety of the act." (*Picklesimer*, at p. 340; see *International Brotherhood of Teamsters, Local 848*, at p. 1111; *Citizens for Amending Proposition L v. City of Pomona* (2018) 28 Cal.App.5th 1159, 1186.)

In reviewing a judgment denying a writ of mandate, we apply the substantial evidence standard of review to the trial court's factual findings, but independently review its findings on legal issues. (*Citizens for Amending Proposition L v. City of Pomona*, *supra*, 28 Cal.App.5th at p. 1186; *Cal Fire Local 2881 v. California Public Employees' Retirement System* (2016) 7 Cal.App.5th 115, 123.) We review issues of statutory

interpretation, including the interpretation of local ordinances and municipal codes, de novo. (*Citizens for Amending Proposition L*, at p. 1186; *City of San Diego v. San Diego City Employees' Retirement System* (2010) 186 Cal.App.4th 69, 78.)

2. *The Department Did Not Have a Ministerial Duty To Exempt the Five Contested Units from the Ordinance*

Salamon's primary argument, made for the first time on appeal, is that version of the Ordinance in effect in 2007 (when she argues Building 2 received its first certificate of occupancy) applies to the contested units and exempts them from the Ordinance. Salamon's argument fails, however, because the five contested units are not exempt under that or any version of the Ordinance. Therefore, because the five units in Building 2 are not exempt, the Department did not have a duty, ministerial or otherwise, to grant Salamon an exemption.

In May 2007, when the City issued a certificate of occupancy for the new unit, the sixth exception to the definition of "Rental Units" excluded from the scope of the Ordinance "[h]ousing accommodations located in a structure for which a certificate of occupancy was first issued after October 1, 1978. . . ." (Former § 151.02, subd. (6), amended by Ord. No. 165,332, eff. Dec. 13, 1989.) Interpreting the 2016 stipulation that resolved Salamon's action against the City before this one to mean the May 2007 certificate of occupancy for the converted storage shed applied to all six units of Building 2, Salamon argues the language of the version of the sixth exception in effect in May 2007 includes Building 2. But as discussed, in 1986 the City passed an ordinance stating that the sixth

exception did "not apply to buildings constructed prior to the time the Department of Building and Safety began the practice of issuing certificates of occupancy." (L.A. Ord. No. 160,791, § 14, eff. Feb. 10, 1986.) Building 2 was constructed at a time when the City did not regularly issue certificates of occupancy for residential structures. Read together, the original Ordinance and the uncodified provision of the 1986 ordinance make clear that the sixth exception did not apply to structures like Building 2. (Cf. *De Vries v. Regents of University of California* (2016) 6 Cal.App.5th 574, 590 [a statute's uncodified prefatory language is an "'enactment of a State law'"]; *Grinzi v. San Diego Hospice Corp.* (2004) 120 Cal.App.4th 72, 86 [an uncodified section of an act "is fully part of the law" and "must be read together with provisions of codes"].) Therefore, the contested units are not exempt under the original version of the Ordinance that was in effect in May 2007.

Nor, as Salamon appears to argue, are the contested units exempt under the more recent versions of the Ordinance. In 2011 the City amended the definition of "Rental Units" to exclude from the scope of the sixth exception "property . . . occupied for residential purposes prior to October 1, 1978," even if a certificate of occupancy was issued after October 1, 1978, so long as a building permit or other relevant documentation established the building was occupied for residential purposes prior to October 1, 1978. (Former § 151.02, subd. (6), amended by Ord. No. 181,744, eff. July 15, 2011.) In 2017 the City further refined that language to its current form: "If the property was issued a building permit for residential purposes at any time on or before October 1, 1978, and a Certificate of Occupancy for the building was never issued or was not issued until after October 1, 1978,

the housing accommodation shall be subject to the [Ordinance]." (§ 151.02, subd. (6), amended by Ord. No. 184,822, eff. Apr. 30, 2017.) Because the City issued a building permit for Building 2 for residential purposes before October 1, 1978, the contested units are not exempt under the 2011 or 2017 (current) versions of the Ordinance. That the City issued a certificate of occupancy for Building 2 after October 1, 1978 (if in fact that is what the 2016 stipulation means) does not affect whether the Ordinance applies to Building 2.

Salamon also argues all units of Building 2 are exempt from the Ordinance because the building was built in 1921 as a single-family residence, which the Ordinance exempts from its scope. Salamon's argument ignores the fact that the City issued the building's previous owners a building permit to convert the original single-family residence into a duplex long before the City adopted the Ordinance. Building 2's previous incarnation as a single-family residence does not exempt the five contested units from the Ordinance. In a related argument, Salamon contends there is no evidence Building 2 was ever converted into a duplex, but substantial evidence supports the trial court's contrary finding. Indeed, the City issued multiple building permits that identified the property's then-current or future use as a duplex or a two-family residence.

Because Salamon has not shown the contested units are exempt from the Ordinance, the City had no ministerial duty to exempt them, and the trial court properly denied the petition for a writ of mandate. (See *People v. Picklesimer*, *supra*, 48 Cal.4th at p. 340 [there is no ministerial duty where there is no "obligation to perform a specific act in a manner prescribed by law whenever a given state of facts exists"].) Substantial

evidence also supports the trial court's finding that Salamon failed to show that the City deemed her collection of rents from Building 2 since May 31, 2007 "illegal" and that show the City had a ministerial duty to declare them legal.

B. *The Trial Court Did Not Err in Granting the City's Motion for Judgment on the Pleadings on Salamon's Cause of Action for Inverse Condemnation*

The trial court granted the City's motion for judgment on the pleadings on Salamon's cause of action for inverse condemnation because she filed the complaint "beyond any limitations' period" and failed to state a claim for inverse condemnation. We agree Salamon's inverse condemnation cause of action is time-barred.

1. *Applicable Law*

"'"A judgment on the pleadings in favor of the defendant is appropriate when the complaint fails to allege facts sufficient to state a cause of action. [Citation.] A motion for judgment on the pleadings is equivalent to a demurrer and is governed by the same de novo standard of review." [Citation.] "All properly pleaded, material facts are deemed true, but not contentions, deductions, or conclusions of fact or law . . . ."'" (*City of Warren Police & Fire Retirement System v. Natera Inc.* (2020) 46 Cal.App.5th 946, 953; see *People ex rel. Harris v. Pac Anchor Transportation, Inc.* (2014) 59 Cal.4th 772, 777.)

"Generally, an inverse condemnation action that is based upon 'damage' to property must be filed within three years of discovery of the damage. [Citation.] Actions based upon a 'taking' of property generally must be filed within five years of

the taking." (*Patrick Media Group, Inc. v. California Coastal Com.* (1992) 9 Cal.App.4th 592, 607; see *Bookout v. State of California ex rel. Dept. of Transportation* (2010) 186 Cal.App.4th 1478, 1483.) But "[s]pecial procedural requirements apply where an inverse condemnation action is based upon a regulatory taking accomplished by a discretionary action of an administrative agency. In such cases, the proper procedure is to bring the inverse condemnation action in conjunction with, or after, a petition for administrative mandamus, as defined in section 1094.5 of the Code of Civil Procedure, the procedure generally required when the validity or propriety of an action or determination by an administrative agency is challenged." (*Patrick Media Group*, at p. 607; see *Beach & Bluff Conservancy v. City of Solana Beach* (2018) 28 Cal.App.5th 244, 262-263.) Code of Civil Procedure section 1094.6, subdivision (b), provides that a petition seeking judicial review of an agency decision "shall be filed not later than the 90th day following the date on which the decision becomes final." "'Failure to obtain judicial review of a discretionary administrative action by a petition for a writ of administrative mandate renders the administrative action immune from collateral attack, either by inverse condemnation action or by any other action.'" (*Beach & Bluff Conservancy*, at p. 263, italics omitted.)

Salamon alleged the Department determined, following a "General Manager's Hearing Decision and an Appeal to the [Department] Appeal Board," the Ordinance applied to the five contested units despite issuing the certificate of occupancy in May 2007. She further alleged the Department's determination "declar[ed] said units to be illegal units and that they must be demolished." "Said determinations," Salamon alleged, amounted

to "a taking, by inverse condemnation, of plaintiffs' property in violation of the United States and State of California Constitutions."[5] Salamon does not identify the date of the Department's determinations, nor did she include in the record on appeal any proceedings before the Department's General Manager or Appeal Board. The record does show that on December 3, 2009 the Department informed Salamon the Ordinance applied to the five contested units because, as set forth in Los Angeles Ordinance No. 160,791, buildings constructed before October 1, 1978 but issued a certificate of occupancy after that date are subject to the Ordinance.[6] The record also includes a Notice and Order of Abatement issued August 30, 2011 informing Salamon she must "demolish and remove" unapproved construction at Building 2 or obtain the required permits and inspection approvals. And the court's June 2012 ruling denying Salamon's petition for writ of mandate stated that the General Manager's Hearing Decision affirming the Ordinance applied to

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[5] Salamon argues in her opening brief that the City's acknowledgement in this action that the May 2007 certificate of occupancy applied to the five contested units, coupled with the 2016 stipulation, "served as the basis for the inverse condemnation claim." But that is not what she alleged in her complaint, nor could she have alleged (without proper amendment) conduct occurring after she filed her complaint.

[6] The City filed a request for judicial notice in support of its motion for judgment on the pleadings. Although the record on appeal does not include a ruling on the City's request, the court referred to documents attached to the request at the hearing on the City's motion, and Salamon does not argue the court erred by relying on those documents or taking judicial notice of them.

the contested units occurred on March 14, 2012. Assuming Salamon appealed the General Manager's decision to the Department Appeal Board, as the complaint suggests, a final decision was rendered no later than June 2012. (See § 151.07, subd. (B)(4).) The 90-day period in which to seek a petition for writ of mandate challenging the Department's administrative decision expired years before Salamon filed this action in December 2016.

Salamon made various attempts to revive her long-barred claims, including by having an attorney in 2010 write a letter to the City Attorney, applying in 2011 for an exemption from the Ordinance, and filing in August 2011 a petition for writ of mandate under Code of Civil Procedure section 1085 to compel the City to "recognize" that the court's purported decision in the 2009 unlawful detainer action Building 2 was exempt. Even if that petition satisfied the mandamus requirement under Code of Civil Procedure section 1094.5, Salamon did not appeal her unsuccessful petition. Salamon's attempt, in this action, to relitigate the writ of mandate she sought in 2011 is untimely because she commenced this action well beyond the 90-day period following the Department's determination that the Ordinance applied to the five contested units of Building 2. (See *Beach & Bluff Conservancy v. City of Solana Beach*, *supra*, 28 Cal.App.5th at p. 263.)[7]

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[7] Salamon does not argue that the 90-day filing deadline under Code of Civil Procedure section 1094.6 does not apply to her regulatory taking cause of action because she is alleging a federal constitutional violation. (See *Knick v. Township of Scott* (2019) ___ U.S. ___, ___ [139 S.Ct. 2162, 2170] [exhaustion of

C. *The Trial Court Did Not Abuse Its Discretion in Denying Salamon's Motion for Leave To Amend*

In her motion for leave to amend the complaint, Salamon sought to add three causes of action and a claim for attorneys' frees.[8] We review the trial court's order denying Salamon's motion for leave to amend the complaint for abuse of discretion. (See *Komorsky v. Farmers Ins. Exchange* (2019) 33 Cal.App.5th 960, 971.) Ordinarily, courts liberally grant leave to amend a complaint unless the opposing party would be prejudiced by the amendment. (*Ibid.*) "Leave to amend a complaint is properly denied, however, if the facts are undisputed and the proposed amendment would not establish a basis for liability as a matter of law." (*Ibid.*)

Salamon argued "an additional dispute" arose regarding whether the contested units are subject to the Ordinance because the City acknowledged in connection with the petition for writ of mandate earlier in this action (the one Judge Strobel denied) that "all 6 units in [Building 2] are legal," but the City did not make clear "from which date forward" its acknowledgement applied. Salamon therefore sought to add a cause of action for declaratory relief seeking to ascertain that date. But even if there were a dispute about the date the City acknowledged the five contested units were "legal," the trial court properly concluded that Judge

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state remedies is not a prerequisite to a federal takings claim under 42 U.S.C. § 1983]; 7 Miller & Starr, Cal. Real Estate (2019 supp.) § 23:38 [statute of limitations for regulatory takings].)

[8] The record on appeal includes Salamon's motion and memorandum of points and authorities in support of her motion, but not the proposed amended complaint, if there was one.

Strobel's ruling on the petition for writ of mandate already adjudicated the issue Salamon sought to now litigate, namely, whether that date had any impact on whether the Ordinance applied. Indeed, regardless of the date on which the units became "legal," they are subject to the Ordinance because the Ordinance applies to properties that, like Building 2, were built before the City routinely issued certificates of occupancy and that were "issued a building permit for residential purposes at any time on or before October 1, 1978." (See L.A. Ord. No. 160,791, § 14, eff. Feb. 10, 1986; § 151.02, subd. (6), amended by Ord. No. 184,822, eff. Apr. 30, 2017.) The trial court did not abuse its discretion in denying Salamon leave to amend the complaint to add the proposed causes of action for declaratory relief and a petition for writ of mandate.

Salamon also sought leave to amend the complaint to add a cause of action based on the Costa-Hawkins Rental Housing Act, Civil Code section 1954.50 et seq. Civil Code section 1954.52, subdivision (a)(1), provides: "Notwithstanding any other provision of law, an owner of residential real property may establish the initial and all subsequent rental rates for a dwelling or a unit" for which "a certificate of occupancy [was] issued after February 1, 1995." Like the sixth exception to the definition of "Rental Units" under the Ordinance, the Costa-Hawkins Rental Housing Act was intended to encourage new construction to increase the residential housing supply. (See *Burien, LLC v. Wiley* (2014) 230 Cal.App.4th 1039, 1047.) Thus, the Costa-Hawkins Rental Housing Act does not apply to properties used for residential purposes prior to February 1, 1995, even if a certificate of occupancy was issued for the property after that date. (See *id.* at pp. 1047-1049.) Because Building 2 was used for

residential purposes prior to February 1, 1995, the contested units do not qualify for relief under the Costa-Hawkins Rental Housing Act.

Finally Salamon sought leave to amend the complaint to add "private attorney general allegations for attorneys fees" under Code of Civil Procedure section 1021.5. As the trial court ruled, however, there is no basis for an award of attorneys' fees under Code of Civil Procedure section 1021.5 because there is no cause of action on which she could obtain attorneys' fees, under Code of Civil Procedure section 1021.5 or otherwise.

DISPOSITION

The order of dismissal is affirmed.

SEGAL, J.

We concur:

PERLUSS, P. J. DILLON, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.